

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
ABERDEEN DIVISION

IN RE:	)	CHAPTER 13
	)	
ALBIRDIA D. BROWN, DEBTOR	)	CASE NO. 17-12178-JDW
	)	
	)	
	)	
	)	
DITECH FINANCIAL LLC AS	)	MOVANT
AUTHORIZED SERVICER FOR U.S.	)	
BANK, N.A., AS TRUSTEE, SUCCESSOR	)	
IN INTEREST TO WACHOVIA BANK,	)	
NATIONAL ASSOCIATION, AS	)	RESPONDENT
TRUSTEE, SUCCESSOR BY MERGER TO	)	
FIRST UNION NATIONAL BANK AS	)	
TRUSTEE, FOR MID-STATE TRUST X	)	
	)	
VS.	)	
	)	
ALBIRDIA D. BROWN, DEBTOR	)	
WENDELL W BROWN, CO-DEBTOR	)	
	)	
	)	

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY  
AND THE CO-DEBTOR STAY AND TO ABANDON PROPERTY**

COMES NOW Ditech Financial LLC as authorized servicer for U.S. Bank, N.A., as Trustee, successor in interest to Wachovia Bank, National Association, as Trustee, successor by merger to First Union National Bank as Trustee, for Mid-State Trust X (“Movant”), by counsel, and shows this Court the following:

1. This is a Motion under Section 362(d) of the Bankruptcy Code for relief from the automatic stay and under Section 1301(c) of the Bankruptcy Code for relief from the Co-Debtor stay for all purposes allowed by law and the contract between the parties, including, but not limited to, the right to foreclose on certain real property described herein.

2. Movant is the servicer of a loan secured by certain real property in which Debtor

and Co-Debtor have an interest. Said real property is security for a promissory note, and is commonly known as **293 Cherry Brown Lane, Ashland, Mississippi 38603** (the "Real Property"). A true, correct and redacted copy of the Deed of Trust-Mississippi ("Deed of Trust") is attached hereto as **Exhibit A** and it is incorporated herein by reference. A true, correct and redacted copy of the Debtor's Promissory Note is attached and fully incorporated herein as **Exhibit B**. True, correct and redacted copies of the Assignments of Deed of Trust are attached and fully incorporated herein as **Exhibit C**. The Real Property herein is located in Benton county, Mississippi, and is described as follows:

**LOT #14**

**1.156 ACRES OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 3 SOUTH, RANGE 1 EAST, BENTON COUNTY, MISSISSIPPI, DESCRIBED AS FOLLOWS:**

**Commence at a 1" angle iron found at the Southwest Corner of said Section 5; thence, run North 62 degrees 00 minutes 44 seconds East, 1837.27 feet to an iron rod set near a fence corner and referenced by deeds as being North, 660 feet and West, 1050 feet from the southeast corner of the Southwest Quarter of said Section 5 and the POINT OF BEGINNING; thence, run North 00 degrees 48 minutes 29 seconds West, along a fence, 210.21 feet to an iron rod set; thence, run West, 241.82 feet to an iron rod set; thence, South 00 degrees 42 minutes 54 seconds East, 206.22 feet to an iron rod set; thence, East, along a fence, 242.25 feet to the POINT OF BEGINNING.**

**Source Deed: Wendell Brown property, Deed Book 149, Page 608.**

**DESCRIPTION OF A 1.41 ACRE EASEMENT FOR THE ABOVE DESCRIBED 1.156 ACRE TRACT, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 3 SOUTH, RANGE 1 EAST, BENTON COUNTY, MISSISSIPPI, DESCRIBED AS FOLLOWS:**

Commence at a 1" angle iron found at the Southwest Corner of said Section 5; thence, run North 62 degrees 00 minutes 44 seconds East, 1837.27 feet to an iron rod set near a fence corner and referenced by deeds as being North, 660 feet and West, 1050 feet from the southeast corner of the Southwest Quarter of said Section 5; thence, run North 89 degrees 03 minutes 27 seconds West, along a fence, 242.25 feet to an iron rod set; thence, run North 00 degrees 42 minutes 54 seconds West, 206.22 feet to the POINT OF BEGINNING; thence, run North 00 degrees 42 minutes 54 seconds West, 1535.83 feet to an iron rod set on the south 40 foot right-of-way line of Lamar Road; thence, continue along said right-of-way line, 40.30 feet, along the arc of a curve to the right, having a delta of 00 degrees 04 minutes 06 seconds, a radius of 33771.98 feet, and a chord of South 83 degrees 43 minutes 55 seconds East, 40.30 feet to an iron rod set; thence, leaving said right-of-way line, run South 00 degrees 42 minutes 54 seconds East, 1531.43 feet to an iron rod set; thence, West, 40 feet to the POINT OF BEGINNING.

3. Documentation provided is in support of right to seek a lift of stay and foreclose if necessary.

4. Debtor has defaulted in making payments which have come due since this case was filed. As of April 8, 2019, Debtor is delinquent for five (5) payments of \$712.20 each (December, 2018 to April, 2019); less \$221.51 in post-petition suspense, which totals \$3,339.49 pursuant to the Note. Additionally, payments are due on the fifth (5<sup>th</sup>) day of each month.

5. As of April 8, 2019, the unpaid principal balance is \$65,753.29, and interest is due thereon in accordance with the Note.

6. In addition to the other amounts due to Movant reflected in this Motion, as of the date hereof, in connection with seeking the relief requested in this Motion, Movant has also incurred \$850.00 in legal fees and \$181.00 in costs.

7. Because of Debtor's default and inability to make all required, payments in the amounts and at the times they are required to be made, Movant is not adequately protected and shows that there is cause for relief from the automatic stay. Movant's interest would also be irreparably harmed by the continuation of the Co-Debtor stay.

8. Debtor's *Schedule A/B* values the property at \$100,000.00. Upon information and belief, Movant is not aware of any other liens against the Property.

9. Upon information and belief, since the filing of the petition herein, the Debtor has remained in possession of and continues to use the Real Property. If Movant is not permitted to exercise its right to foreclose upon its security, it will suffer irreparable injury, loss and damage.

10. Movant requests it be permitted to contact the Debtor and Co-Debtor via telephone or written correspondence regarding potential loss mitigation options pursuant to applicable non-bankruptcy law, including loan modifications, deeds in lieu of foreclosure, short sales and/or any other potential loan workouts or loss mitigation agreements.

WHEREFORE, Movant prays as follows:

(1) for an Order modifying the automatic stay and Co-Debtor Stay, authorizing Movant, its successors and assigns, to proceed with the exercise of its private power of sale and to foreclose under its Deed of Trust and appropriate state statutes;

(2) Because the Deed of Trust so provides, Debtor is responsible for Movant's reasonable attorney's fees;

(3) that Movant, at its option, be permitted to contact the Debtor and Co-Debtor via telephone or written correspondence regarding potential loss mitigation options pursuant to applicable non-bankruptcy law, including loan modifications, deeds in lieu of foreclosure, short sales and/or any other potential loan workouts or loss mitigation agreements;

(4) for waiver of Bankruptcy Rule 4001 (a)(3); and

(5) for such other and further relief, both general and specific, as is just and equitable.

Respectfully submitted, this the 13th day of May, 2019.

**DITECH FINANCIAL LLC AS AUTHORIZED  
SERVICER FOR U.S. BANK, N.A., AS TRUSTEE,  
SUCCESSOR IN INTEREST TO WACHOVIA BANK,  
NATIONAL ASSOCIATION, AS TRUSTEE,  
SUCCESSOR BY MERGER TO FIRST UNION  
NATIONAL BANK AS TRUSTEE, FOR MID-STATE  
TRUST X**

BY: /s/ *Karen A. Maxcy*

Karen A. Maxcy  
Mississippi Bar No. 8869  
McCalla Raymer Leibert Pierce, LLC  
1544 Old Alabama Road  
Roswell, GA 30076  
Direct Phone 678-321-6965  
Email: Karen.Maxcy@mccalla.com  
*Attorney for Movant*

**CERTIFICATE OF SERVICE**

I, Karen A. Maxcy, of McCalla Raymer Leibert Pierce, LLC, do hereby certify that on this date, I served a copy of MOTION FOR RELIEF FROM THE AUTOMATIC STAY AND TO ABANDON PROPERTY filed in this bankruptcy matter on the following parties at the addresses shown, through the Court's ECF/CMF system, and/or via U.S. Mail First Class, postage prepaid and properly addressed, to-wit:

**Debtor**

Albirdia D. Brown  
293 Cherry Brown Lane  
Ashland, MS 38603

**Co-Debtor**

Wendell W Brown  
293 Cherry Brown Lane  
Ashland, MS 38603

**Debtor's Attorney**

Heidi Schneller Milam  
P.O. Box 1169  
Southaven, MS 38671

*(via ECF/CMF Electronic Notice)*

**Chapter 13 Trustee**

Locke D. Barkley  
6360 I-55 North  
Suite 140  
Jackson, MS 39211

*(via ECF/CMF Electronic Notice)*

**U.S. Trustee**

U. S. Trustee  
501 East Court Street, Suite 6-430  
Jackson, MS 39201

*(via ECF/CMF Electronic Notice)*

CERTIFIED, this the 13th day of May, 2019.

/s/ Karen A. Maxcy

Karen A. Maxcy